

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

RODERICK WRIGHT,

Plaintiff,

vs.

GENERAL MOTORS ACCEPTANCE  
CORPORATION,

Defendant.

CASE NO. 09cv2666 JM(AJB)

ORDER DENYING MOTION FOR  
RECONSIDERATION

Defendant Ally Financial Inc., formerly known as GMAC, erroneously sued as General Motors Acceptance Corporation (“Ally” or “GMAC”), moves, pursuant to Federal Rule of Civil Procedure 60(b), for reconsideration of this court’s April 23, 2012 Order Denying Defendant’s Motion for Attorney’s Fees (“Order”). Plaintiff opposes the motion for reconsideration. Pursuant to Local Rule 7.1(d)(1), this matter is appropriate for decision without oral argument.

Reconsideration is generally appropriate “if the district court (1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law. . . . There may also be other, highly unusual circumstances warranting reconsideration.” School Dist. No. 1J, Multnomah County, Oregon v. ACandS, Inc., 5 F.3d 1255, 1263 (9<sup>th</sup> Cir. 1993) (citations omitted). Rule 60(b) “provides for reconsideration only upon a showing of (1) mistake, surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud; (4) a void judgment; (5) a satisfied or discharged judgment; or (6) ‘extraordinary circumstances’ which would justify relief.” Fuller v. M.G. Jewelry, 950 F.2d 1437,

1 1442 (9th Cir. 1991).

2 Here, Ally seeks to resubmit a legible copy of the attorney's fees provision originally rejected  
3 by the court. Ally argues that its failure to submit a legible copy of the attorney's fees provision was  
4 the result of counsel's mistake or excusable neglect. See United States v. Sparks, 685 F.2d 1128, 1130  
5 (9<sup>th</sup> Cir. 1982) (a party must demonstrate "extraordinary circumstances" to obtain relief from a  
6 judgment). Counsel declares that he was unaware that the attorney's fees provision was illegible.  
7 (Kemp Decl. ¶2-3).

8 The court notes, moreover, that Ally has mischaracterized the illegibility of the attorney's fees  
9 exhibit by suggesting it did not realize the copies were "difficult to read." (Motion at p.2:7). Ally's  
10 implication that the copies could have been read, perhaps with a little more diligence from the court,  
11 is egregious. Not only was the print excruciatingly small, but when the court pored over the copies  
12 with a magnifying glass the enlarged images were still blurred and illegible. As it turns out, mush  
13 magnified is still mush.

14 The court denies the Rule 60(b) motion for several reasons. First, Ally fails to demonstrate  
15 the existence of any newly discovered evidence, clear error, intervening change in controlling law or  
16 unusual circumstance warranting reconsideration. Second, it is incumbent upon every party to ensure  
17 the court receives legible copies of, at least, critical documents. See Fed.R.Civ.P. 11. A party's  
18 failure to review critical documents prior to filing, does not, without more, constitute excusable  
19 neglect.<sup>1</sup> Third, the Order denying attorney's fees was also based on the ground that attorney's fees  
20 are not recoverable under Davis v. Ford Motor Co., 179 Cal.App.4th 581 (2009). In its motion, Ally  
21 sets forth no argument contrary to Davis. Accordingly, there are no grounds warranting  
22 reconsideration of the Order.

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27 <sup>1</sup> The court notes that Ally filed the same illegible copy on two separate occasions. (Ct. Dkt.  
28 65-3, Exh. A ¶3(c); 68-2, Exh. A ¶3(c)). Plaintiff also brought the defect to Ally's attention in its  
opposition to the original motion for attorney's fees. (Ct. Dkt. 93). Ally, alerted to this defect by  
Plaintiff, did not address the issue in its reply brief. (Ct. Dkt. 95).

1 In sum, the motion for reconsideration is denied.

2 **IT IS SO ORDERED.**

3 DATED: June 5, 2012

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5 Hon. Jeffrey T. Miller  
United States District Judge

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